

# COURTHOUSE NEWS

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A Summary of Topical Highlights from decisions of the  
U.S. District Court for the District of Oregon  
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## Pretrial Services - Use of Confidential Informants

Since the inception of the Federal criminal justice system, prosecutors have utilized defendants and other persons under condition release as confidential informants. The use of confidential informants is an important law enforcement tool and, in the era of sentencing guidelines and mandatory minimum sentences, can sometime also be a considerable benefit to the informant.

Activities required of confidential informants, however, may potentially conflict with conditions imposed by the court. Such activities may also pose risks to the pretrial services officer who supervises the individual, especially when the officers have limited knowledge or know knowledge of the nature of the informant's activities. The absence of clear procedures to manage these cases can also result in confusion and misunderstanding between various law enforcement agencies and the pretrial services

officer.

For these reasons, the District of Oregon has developed procedures for the management of informants by pretrial services officers. The procedures are not intended to encourage the use of supervised persons as confidential informants, but rather they are intended to ensure the integrity of the supervision orders of the court; to promote interagency communication, cooperation, and understanding; and to provide for the consistent and safe management of persons under supervision.

Procedures will require law enforcement agencies to notify Pretrial Services of the defendant's status as a confidential informant and take all necessary and reasonable precautions to ensure the safety of the defendant, the officer and the community. The pretrial services officer will in turn provide the law enforcement agency with a copy of the defendant's conditions of release and the officer's projected supervision activities. Law enforcement

agencies working with defendant's will be required to advise the pretrial services officer of any changes or activities that would have an impact on supervision activities of the officer or create a risk of harm to the officer. Violations of release conditions by the defendant will not be condoned and should not be encouraged by the law enforcement agency. Should evidence of a violation become known, the law enforcement agency is responsible for notifying the pretrial services officer. Upon conclusion of the cooperation agreement between the defendant and the government, the government will be responsible for notifying the pretrial services that they have terminated the agreement.

## Internet Access to Criminal Case Files

November 1, 2004 has been set as the date for district courts to implement a new Judicial Conference Policy on Privacy and Public Access to Electronic Criminal Case Files. For the past few years, it has been

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Judicial Conference Policy to restrict internet access to documents filed in criminal cases to court staff and counsel of record with CM/ECF logins and passwords. However, after feedback from the Committee's subcommittee on Criminal Law and Defender Services, the Conference recently approved a guidance and model local rule intending to: 1) make all case file documents, including criminal case documents, that are available to the public at the courthouse available to the public via remote electronic access if a court is making case documents electronically available though PACER and CM/ECF; 2) address issues involving the redaction of personal data identifiers (i.e., Social Security numbers, dates of birth, names of minor children, etc.) and confirming that it is the obligation and responsibility of counsel and the parties, and not the clerk of court, to redact or move to seal documents containing such information; and 3) identify those documents for which there should be no public access, whether in paper or electronic form (i.e., presentence investigation reports, juvenile records, etc.)

In the District of Oregon, steps to comply with this new guidance are being enacted, including notification to the Federal Defender's and the US

Attorney's Offices of this policy change. Procedures will be in place to ensure that criminal case documents filed with the court prior to November 1, 2004, remain viewable over the Internet only by court staff and counsel of record with CM/ECF logins and passwords, and that filings on or after November 1, 2004, comply with the new Judicial Conference policy. For complete details, visit: <http://privacy.uscourts.gov>

### Bankruptcy

Judge Stewart denied defendants' motion for summary judgment, which sought judicial estoppel against plaintiffs' medical malpractice claim because plaintiffs had not listed that claim on their bankruptcy schedules filed as part of their bankruptcy proceeding pending at the time the malpractice claim arose.

Although judicial estoppel applies where the parties are attempting to play "fast and loose" with the judicial system, Judge Stewart found no bad faith. Plaintiffs mistakenly failed to list the claim on their bankruptcy schedule, but their bankruptcy attorney sent a letter to the bankruptcy trustee informing him of the malpractice claim. The bankruptcy trustee informed plaintiffs' creditors of the claim

and then decided not to pursue the claim on behalf of the bankrupt estate.

Additionally, judicial estoppel was precluded because, upon realizing their scheduling mistake, plaintiffs reopened their bankruptcy and the bankruptcy court abandoned the malpractice claim as an asset of the estate.

Froshiesar v. Babij,  
CV 02-449-ST

(Opinion, October 27, 2004)

Plaintiffs' Counsel: Linda Eyerman

Defense Counsel: Robert Mautz

### Due Process, Seizure

Judge Aiken granted defendants' summary judgment motion finding that plaintiffs' were not subjected to an unreasonable seizure of their vehicle when the City towed it, and that plaintiff's were not deprived of their property without due process of law in violation of the Fourteenth Amendment.

Miranda v. City of Cornelius,  
CV 04-241-AA

(Opinion, September 9, 2004)

Plaintiffs' Counsel: Spencer Neal

Defense Counsel: Gerald Warren

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